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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

New York, N.Y.

v.

20 Cr.160 (MKV)

MARCOS ZULUETA,

Defendant.

February 24, 2022  
9:40 a.m.

Before:

HON. MARY KAY VYSKOCIL,

U.S. District Judge

APPEARANCES

DAMIAN WILLIAMS

United States Attorney for the  
Southern District of New York

BY: ANDEN F. CHOW

Assistant United States Attorney

ROBERT E. GOLDMAN, LLC

Attorneys for Defendant

BY: ROBERT E. GOLDMAN

ALSO PRESENT: GABRIEL MITRE, Spanish Interpreter  
BRUCE TURPIN, Special Agent, FBI

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, starting with the  
3 government, please state your name for the record.

4 MR. CHOW: Anden Chow for the government. Good  
5 morning, your Honor.

6 THE COURT: Good morning, Mr. Chow.

7 MR. CHOW: With me today is special agent Bruce Turpin  
8 with the FBI.

9 THE COURT: Good morning Special Agent Turpin.

10 AGENT TURPIN: Good morning, your Honor.

11 For the defendant?

12 MR. GOLDMAN: Yes. Robert Goldman, your Honor, good  
13 morning.

14 THE COURT: Good morning.

15 And you are Mr. Zulueta?

16 THE DEFENDANT: (In English) Good morning.

17 THE COURT: Good morning. Please, be seated.

18 And good morning to our court reporter Ms. Utter.

19 Thank you for being here.

20 So we are here this morning for the sentencing of  
21 Mr. Zulueta. As you know, I am Judge Vyscocil, and I have been  
22 presiding over this case. Before we get to the substance,  
23 Mr. Zulueta, I understand that you have requested that there be  
24 an interpreter available today?

25 THE DEFENDANT: (In English) Yes.

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1 THE COURT: And we do have an interpreter on standby  
2 as I understand it, correct?

3 INTERPRETER: Yes, Judge.

4 THE COURT: Are you not simultaneously translating  
5 everything?

6 INTERPRETER: I am currently not at the request of the  
7 defendant and his counsel, Judge, but I am prepared to do so at  
8 any time.

9 THE COURT: Mr. Goldman, I would like you to make a  
10 record on this, please.

11 I want to just note two things. Mr. Zulueta did  
12 request that we have an interpreter on standby at his plea and  
13 we did do that.

14 MR. GOLDMAN: Yes.

15 THE COURT: We have somebody here today, should  
16 Mr. Zulueta request that, but I also note that in a lot of the  
17 transcribed calls that are part of the record today in which  
18 Mr. Zulueta was conferring with Jorge Navarro -- both of whom  
19 are apparently native Spanish speakers -- they communicated in  
20 English.

21 Is that correct, Mr. Chow?

22 MR. CHOW: That is correct, your Honor.

23 THE COURT: So, Mr. Goldman, I don't know how you want  
24 to handle the issue of an interpreter.

25 MR. GOLDMAN: Yes, your Honor.

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1 THE COURT: Clearly, Mr. Zulueta is entitled to it if  
2 he wishes.

3 MR. GOLDMAN: Your Honor, we are doing this for  
4 cautionary purposes. There is times when certain words or  
5 legal terms or whatever might be difficult for my client to  
6 understand in the English language. I have always been able to  
7 communicate with him in English. This is just to be cautious  
8 and to not to delay the proceedings in case something comes up.

9 THE COURT: Yes, of course.

10 I mean, Mr. Zulueta, it is very important that you  
11 understand what I am saying to you today and what the  
12 government and your lawyer will put on the record. So if at  
13 any time, at any point you need the assistance of an  
14 interpreter, you need to please let Mr. Goldman know and he  
15 will advise the Court.

16 THE DEFENDANT: (In English) Yes, your Honor.

17 THE COURT: Do you want simultaneous translation of  
18 everything?

19 THE DEFENDANT: (In English) No. I -- when I don't  
20 understand some word that's when I need, you know -- I need to  
21 explain me. I can understand it maybe 75 percent, 80 percent.

22 THE COURT: All right. So you will let us know --

23 THE DEFENDANT: (In English) Yes, your Honor.

24 THE COURT: -- if you need an interpreter, correct?

25 THE DEFENDANT: (In English) Yes, your Honor.

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1 THE COURT: Thank you. You may be seated.

2 I will also say before we get going that everyone can  
3 remain seated until I impose judgment, at which point I will  
4 ask you, Mr. Zulueta, to stand. But, otherwise, please remain  
5 seated because the microphones pick you up much more clearly  
6 when you are seated.

7 For the record, Mr. Zulueta pled guilty on October  
8 15th, 2021, pursuant to an agreement with the government, to  
9 one count of drug adulteration and misbranding with intent to  
10 defraud in violation of Title 21, United States Code,  
11 Section 331 and 333A2. Since then, the probation office has  
12 met with Mr. Zulueta in the presence of his counsel. It has  
13 completed its investigation. I have the presentence report  
14 together with the submissions filed by both sides.

15 For the record, the following have been submitted and  
16 I am going to ask you to confirm at the conclusion that what I  
17 am reciting is the complete and accurate record before me.

18 So I have the final presentence report filed on  
19 October 6th, 2022, at ECF 638. I have defendant's sentencing  
20 submission filed on February 11, 2022, at ECF 766. That  
21 initial submission enclosed seven letters of support. On  
22 February 22nd, I received a further submission from defense  
23 counsel that enclosed eight additional letters including a  
24 letter from Mr. Zulueta, and that is filed at ECF 781. I just  
25 note that one of those letters had already been submitted with

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1 the initial submission. Today Mr. Goldman has provided to the  
2 Court one additional letter in support of Mr. Zulueta.

3 The government's sentencing submission was filed on  
4 February 17th, 2022, and that is on the docket at ECF 773. It  
5 attaches two exhibits, A and B, both of which are under seal.

6 Mr. Chow, the submission itself is not under seal,  
7 correct?

8 MR. CHOW: That is correct.

9 THE COURT: So let me confirm with both sides that  
10 this is the totality of the record before the Court.

11 Mr. Goldman?

12 MR. GOLDMAN: Yes, your Honor.

13 THE COURT: Mr. Chow?

14 MR. CHOW: Yes, your Honor.

15 THE COURT: Thank you.

16 Mr. Goldman, would you confirm for me, please, have  
17 you had a full opportunity to read the presentence report, to  
18 discuss it with Mr. Zulueta, and to lodge any objections?

19 MR. GOLDMAN: We have, your Honor.

20 THE COURT: Mr. Zulueta, have you read the presentence  
21 report?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: Have you discussed it with Mr. Goldman?

24 THE DEFENDANT: (In English) Yes, your Honor.

25 THE COURT: Have you had all the time you need to

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1 discuss it with your lawyer?

2 THE DEFENDANT: (In English) Yes, your Honor.

3 THE COURT: And you have had time to raise any  
4 concerns or objections?

5 THE DEFENDANT: (In English) Yes, your Honor.

6 THE COURT: Mr. Chow, has the government had an  
7 opportunity to read the report and to tender any objections?

8 MR. CHOW: Yes, your Honor.

9 THE COURT: I have a couple of questions I would like  
10 to -- or a couple of issues I would like to review with the  
11 parties before accepting the report.

12 First, Mr. Goldman, would you please confirm for me  
13 that you have read and specifically discussed with Mr. Zulueta  
14 the proposed conditions of supervised release which are set  
15 forth in the PSR at pages 37 through 39?

16 MR. GOLDMAN: I have, your Honor.

17 THE COURT: And are you comfortable with me referring  
18 to them generically as the standard and mandatory conditions  
19 and not putting them verbatim on the record?

20 MR. GOLDMAN: Certainly, your Honor.

21 THE COURT: Thank you.

22 Mr. Chow, does the government still believe that  
23 Mr. Zulueta is entitled to the two-level reduction in the  
24 offense level calculation based on his clearly demonstrated  
25 acceptance of responsibility?

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1 MR. CHOW: Yes, your Honor.

2 THE COURT: And does the government now move for a  
3 further one-level reduction pursuant to Section 3E1.1(b) by  
4 reason of defendant's timely notice of his intention to enter a  
5 plea of guilty?

6 MR. CHOW: It does, your Honor.

7 THE COURT: That motion is granted.

8 So let me just confirm for the record that it is  
9 Court's understanding that neither party has any objection to  
10 the PSR, and I note specifically that that is even though the  
11 PSR guidelines calculation is different than that which the  
12 parties agree to in the plea agreement.

13 Mr. Goldman, is that correct? No objection to the  
14 PSR?

15 MR. GOLDMAN: That's correct, your Honor.

16 THE COURT: Government?

17 MR. CHOW: That's correct, your Honor.

18 THE COURT: There are no objections to the PSR and I  
19 will therefore adopt the PSR and the factual findings and the  
20 guidelines calculation therein. Again, I note that the  
21 stipulated guidelines range in the plea agreement does not  
22 match what is set forth in the PSR calculation, but the parties  
23 do agree that the guidelines range in the PSR is correct. I  
24 will also note for the record that what is in the PSR matches  
25 the Court's own independent calculation of the guidelines range



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1 which I am obligated to make. So, I adopt the PSR in full, it  
2 will be made part of the record in this case, and placed under  
3 seal. If an appeal is taken, counsel on appeal may have access  
4 to the sealed PSR report without further application to the  
5 Court.

6 So, does the government wish to be heard at this time?

7 MR. CHOW: Briefly, your Honor.

8 I believe the government has set forth a fulsome  
9 recitation of the facts in its argument for why it believes a  
10 sentence within the calculated guidelines range of the plea  
11 agreement is appropriate in this case.

12 I do want to emphasize two aspects about this case.  
13 The first is that this case is a constant reminder of the  
14 perversion of everything noble by greed. Throughout the  
15 submission and the letters of support submitted by the defense  
16 there are a multitude of references to how hard it was for the  
17 defendant to pull himself up from his hardscrabble upbringings  
18 and it was his hard work and determination that brought him  
19 into this country and gave him a foothold. And these are truly  
20 laudable characteristics. But, as it turns out, it wasn't  
21 enough for this defendant.

22 The crime at issue was not one of desperation or need.  
23 It was greed. This was wanting a million dollar business the  
24 easy way. By cheating. He wanted the recognition, the  
25 respect, the money associated with winning, but was no longer

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1 willing to do it the hard way, the way that all other  
2 law-abiding citizens have to do it.

3 And so, along the way, he abandoned another important  
4 attribute, and this is referenced throughout the letters, about  
5 how he demonstrated care for the horses under his charge. But,  
6 as evidenced by the intercepted communications in this case,  
7 they show how far he has strayed. Endangering horses, nearly  
8 killing them, this no longer phased him, and in the process he  
9 normalized the systemic abuse of these animals. He no longer  
10 prioritized their health, he no longer cared that he was  
11 abusing them. He was treating them as no more than tools or  
12 machines that he could manipulate to win. And for these two  
13 reasons, and all the other reasons set forth in the  
14 government's submission, the government respectfully submits  
15 that a sentence within the guidelines range set forth in the  
16 plea agreement would be appropriate in this particular case.

17 THE COURT: Thank you.

18 Mr. Goldman, would you like to be heard?

19 MR. GOLDMAN: Yes, your Honor. Do you mind if I  
20 stand?

21 THE COURT: Sure. Whatever you are more comfortable  
22 with but you will use the podium so the microphone picks you  
23 up.

24 MR. GOLDMAN: Yes. Thank you, your Honor.

25 Your Honor, the first thing I would like to address is

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1 what is set forth in the presentence report, and it is my  
2 belief that the Criminal History Category overstates the  
3 criminal history of Mr. Zulueta, and therefore would warrant a  
4 reduction down to Criminal History I.

5 THE COURT: That gets you right back to where you were  
6 in the plea agreement though, right?

7 MR. GOLDMAN: Yes, but you can do that. You can do  
8 that under the sentencing guidelines. It is a sentencing  
9 issue --

10 THE COURT: No, I understand that. I am asking is  
11 that the effect, if I were to adopt your argument?

12 MR. GOLDMAN: Yes, your Honor.

13 THE COURT: OK.

14 MR. GOLDMAN: Yes.

15 And the reason for that is the DUI. Well, there is  
16 two summaries and the DUI was not a plea of guilty, and it was  
17 not a finding of guilty, and has actually been expunged, it is  
18 a diversionary program. In Bucks County, where he was placed  
19 on that program, I was a prosecutor there and I do criminal  
20 defense work there, amongst other places, and so that's -- in  
21 Bucks County there is no requirement whatsoever that that  
22 person acknowledges guilt. They're accepted into the  
23 diversionary program and at the conclusion of six months that  
24 they don't get any other arrest during that six months' period,  
25 then the Court then dismisses the charges and the charges are

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1 expunged except for purposes of law enforcement going back and  
2 looking for the record.

3 So in reality, your Honor, we have two summaries and  
4 we have a non-conviction of Mr. Zulueta for the DUI and so  
5 because of that, your Honor, I think that the recommendation of  
6 the probation office is warranted and, respectfully, I ask you  
7 to accept that and sentence him under Criminal History I. It  
8 is not a significant difference but it is a difference of three  
9 months and I think it is warranted under the facts in this  
10 case.

11 And I was not going to quarrel with, you know -- I am  
12 not one to quarrel with presentence reports if I don't need to.  
13 I didn't think I needed to in that case and I thought the  
14 request for the reduction would adequately cover this.

15 So I think -- I don't know if you want to rule on that  
16 now, your Honor, or at the end.

17 THE COURT: I don't need to rule on that. It's your  
18 position that I can take into account. You have said you don't  
19 object to the PSR. I only need to rule on objections.

20 MR. GOLDMAN: Well, your Honor, respectfully, my  
21 experience is that the Court has to first decide where the  
22 criminal history is.

23 THE COURT: I told you, and I will recite before  
24 sentencing my calculation under the guidelines, but I told you  
25 that I agree with the calculations set forth in the PSR which

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1 you and the government have said you do not dispute.

2 MR. GOLDMAN: Sure, but the second step is then --

3 THE COURT: So there is nothing to rule on.

4 MR. GOLDMAN: There is, your Honor. I'm asking for a  
5 reduction in the criminal history to Criminal History I because  
6 it is overstated and that's to be done not in objections,  
7 that's to be done as I am doing now. I am not arguing with the  
8 Court.

9 THE COURT: It is part of your argument, and as you  
10 have just acknowledged, I asked you, even if I were to credit  
11 what you are saying, that gets you back to where you were in  
12 the plea agreement with a guidelines range of 30 to 36 months,  
13 correct?

14 MR. GOLDMAN: That's right.

15 THE COURT: That's what I have used as not my  
16 calculation but my thought process -- which I will lay out for  
17 you after I hear from you and Mr. Zulueta, if he wishes to  
18 speak with me.

19 MR. GOLDMAN: OK. I just made the request that it be  
20 done. Thank you.

21 But let me get to the substance here.

22 THE COURT: Yes. Please.

23 MR. GOLDMAN: It has never been --

24 THE COURT: Sorry.

25 By the way, let me say one more thing on this.

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1 Regardless of the impact on the guidelines calculation which  
2 is, as set forth in the PSR, correct; a DUI, whether there is a  
3 conviction or not, is certainly conduct that's part of the  
4 whole mix of what I am permitted to consider, correct?

5 MR. GOLDMAN: No, because it was an ARD. It is a  
6 non-conviction. So, I mean, I believe you only consider  
7 convictions.

8 THE COURT: OK. Go on to the rest of your position.

9 MR. GOLDMAN: The amount of time difference is not  
10 worth me dwelling on this further but --

11 THE COURT: Correct.

12 MR. GOLDMAN: -- but it is necessary for me to have  
13 stated it, your Honor.

14 Your Honor, what I was saying is I think you can see  
15 we have never minimized in this case the seriousness of the  
16 offenses. There is no doubt how serious the offense is in this  
17 case and I'm not here to diminish in any way the actions of my  
18 client and my client hasn't done so either. So you are dealing  
19 with a balance, now, of the seriousness of the offense and now  
20 we are looking at the 3553 other factors which, obviously, you  
21 know, you need to consider, and to consider to see whether or  
22 not a variance in the sentencing guidelines is warranted in  
23 this case. And I respectfully submit to you that I believe  
24 that it is warranted in this case.

25 THE COURT: Are you arguing for a variance or going

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1 back to your earlier argument? I just want to note something  
2 that you say in your submission -- well, the PSR does make the  
3 argument that probation thinks the defendant's criminal history  
4 category may substantially overrepresent the seriousness of his  
5 criminal history and may warrant a departure.

6 You say in the defendant's submission: The defendant,  
7 of course, "fully endorses the 'departure' to Criminal History  
8 Category I recommended by the PSR."

9 Now, pursuant to the plea agreement it is my  
10 understanding that the defendant agreed not to request a  
11 departure.

12 MR. GOLDMAN: Judge, on this type of issue that is  
13 never foreclosed by a guilty plea between the government and  
14 the defense.

15 THE COURT: Notwithstanding that the plea agreement  
16 was negotiated based on what your client told the government  
17 about his criminal history?

18 MR. GOLDMAN: Yes, your Honor. I mean --

19 THE COURT: So he can basically be less than  
20 forthcoming?

21 MR. GOLDMAN: That's not what I am saying, your Honor,  
22 and that is based upon 28 years as a prosecutor, 19 as a  
23 federal prosecutor, and 40-some years of doing criminal law. I  
24 am submitting to this Court that in the eyes of a defense  
25 attorney and as a prosecutor, as I practice as a prosecutor,

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1 the first step is what are the guidelines and then if there is  
2 an argument on criminal history overstating the criminal  
3 history, that argument can be made. And I have never seen it  
4 foreclosed by a prosecutor or by a Court.

5 THE COURT: So are you arguing, though -- I didn't  
6 mean to divert you back from the substance but are you arguing  
7 that this, in your view, overstatement of the criminal history,  
8 warrants a departure or a variance?

9 MR. GOLDMAN: Both.

10 THE COURT: Your motion or your application for a  
11 departure is denied.

12 Go ahead, though, with respect to the substance.

13 MR. GOLDMAN: Then I would ask on that, so I don't  
14 have to go back, circle back to it, that it is grounds for a  
15 variance from the sentencing guidelines.

16 THE COURT: You can make your -- that I don't need to  
17 rule on independently.

18 MR. GOLDMAN: So what I was saying, your Honor, is  
19 there is no dispute on our side or any minimization has ever  
20 been raised in this case by us as far as what Mr. Zulueta did  
21 and what is reflected in the government's prosecution in this  
22 case but you are to sentence Mr. Zulueta as an individual and  
23 clearly as different from any other defendants.

24 THE COURT: Correct.

25 MR. GOLDMAN: They're not all just lumped together and



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1 just get a blanket, top-of-the-guidelines or guideline  
2 sentence.

3 In this case Mr. Zulueta, as evidenced by the letters  
4 that have been submitted by people that know him best,  
5 reinforce the fact that he is immensely remorseful for what he  
6 did, he has accepted responsibility in his community for what  
7 he did, he has told people in his community what he did in this  
8 case, and we wouldn't even insult the Court by coming in here  
9 and asking for a probationary sentence or a house arrest  
10 sentence, but I am asking for a variance in the guidelines  
11 along the lines what is recommended by probation in this case.

12 Mr. Zulueta, as the Court is fully aware -- if you  
13 will give me opportunity to restate this -- we all know what he  
14 did bad, but we also have to reflect on the good man that he  
15 is. You can have that and I am certainly aware that you know  
16 this by now, handling the criminal cases, that the people  
17 before the Court often present a conflicted individual, a  
18 person with two sides, a person that appears in Court for  
19 having done wrong and a person, who in this case, has done a  
20 lot of good. And the question you heard probably from every  
21 defense attorney is what is a sentence that's no greater than  
22 necessary in this case.

23 Mr. Zulueta has always worked hard in his life. You  
24 know well, and I don't need to spend much time on, his  
25 background supporting his family in Cuba. When he came to the

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1 United States he continued hard work, manual labor, continued  
2 to support up until the time that he has lost his employment,  
3 an extended family, including his mother and his family  
4 members, still reside in Cuba.

5 Obviously your sentence needs to reflect deterrence  
6 but I would respectfully submit to this Court that what's  
7 happened to Mr. Zulueta by his own acts is he has lost his  
8 beloved occupation and his love which was racing horses. And I  
9 believe we all know that he is not going to get a license again  
10 with this type of conviction.

11 He had to sell his house, he is being supported by his  
12 girlfriend, he has lost the one job that he had and it is all  
13 because of this case. Those are collateral consequences, he  
14 brought it upon himself, but we are looking at the punishment  
15 that he has already received from his actions. And so  
16 respectfully, your Honor, it seems to me that something to  
17 reflect upon, is he wants to get back out and become a  
18 contributing member of society and I think that the letters  
19 reflect that Mr. Zulueta can and will be that type of person.  
20 And so the issue is, is 36 months or 33 months or 30 months or  
21 what is recommended by the probation office, is one of those  
22 going to accomplish the 3553 factors? And I would respectfully  
23 submit that it's not. If your sentence is 34 months, or 36  
24 months, or in the other range that I have stated, it is not  
25 going to cause people not to be deterred and not to commit

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1 offenses. And we know that through the drug business and drug  
2 trade. It is the same thing. People are just -- there will  
3 always be people committing violations. But I believe, your  
4 Honor, that Mr. Zulueta has a lot to contribute and he can turn  
5 his life around. He has got great support from his family, he  
6 has got great support by members of the community, and I would  
7 respectfully ask you to grant a variance in this case and also  
8 to grant the variance in the sentencing guidelines.

9 Thank you.

10 THE COURT: Thank you.

11 Mr. Zulueta, you have a right to address the Court at  
12 this point if you would like to do but you are not obligated to  
13 do that.

14 Would you like to address the Court?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: All right. It is up to you if you want to  
17 stand. If you want, you can go over there, that way you don't  
18 have to bend down to the table.

19 THE DEFENDANT: (In English) All my life I tried to  
20 do the right thing. I came to this country. This country gave  
21 me great opportunity. Great opportunity. I made mistake. I  
22 take responsibility. I am sorry for all the people I hurt.

23 Thank you, your Honor.

24 THE COURT: Thank you, Mr. Zulueta.

25 I will now describe the sentence that I intend to

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1 impose. Obviously the attorneys will have a final opportunity  
2 to make legal objections before I finally impose sentence.

3 As I have said on the record already, I agree with the  
4 parties -- both parties and probation -- that the guidelines  
5 range is 33 to 36 months, not 30 to 36, as set forth in the  
6 plea agreement. Neither party objected to that. I asked  
7 repeatedly and Mr. Goldman has said he is not raising an  
8 objection. Nevertheless, he argued to me that I should somehow  
9 depart and I will deal with that in a moment. In terms of my  
10 own calculation, though, as I say, I do calculate that the  
11 range is 33 to 36 months, as follows:

12 The base offense level is six under the sentencing  
13 guidelines Section 2N2.1C1 and 2B1.1A2, and that is because  
14 Count One, to which Mr. Zulueta pled guilty, is a violation of  
15 the FDCA that involves fraud. And the statutory maximum is  
16 less than 20 years. The offense level is increased by 14  
17 levels according to the loss amount table. The parties have  
18 agreed that the intended loss amount was greater than \$550,000  
19 but less than \$1.5 million. There is an additional two-level  
20 enhancement for Mr. Zulueta's role in the offense because, as a  
21 licensed race horse trainer, with custody and charged with the  
22 care of other people's animals, he abused that position of  
23 trust.

24 I have taken into account the two-level reduction for  
25 acceptance of responsibility under Section 3E1.1(a) of the

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1 guidelines and if I did not, I hereby grant the government's  
2 motion for a further one-level reduction based on Mr. Zulueta's  
3 giving timely notice of his intent to plead guilty under  
4 Section 3E1.1(b). That results in a total offense level of 19.

5 As I have previously said, the plea agreement  
6 calculation was based, at least in part, on representations  
7 that the defense made to the government prior to entry into  
8 that plea, that Mr. Zulueta had no prior criminal history and  
9 therefore the parties in the plea agreement used no criminal  
10 history points putting him in Criminal History Category I.

11 MR. GOLDMAN: Your Honor, may I interrupt? I did not  
12 make recommendations, just so you know that so that's clear.

13 THE COURT: I'm sorry?

14 MR. GOLDMAN: I did not make representations to the  
15 government on -- in getting this plea agreement. I did not  
16 make representations to the government about the criminal  
17 record of my client.

18 THE COURT: Let me just find the plea agreement.

19 MR. GOLDMAN: It was drafted by the government, I made  
20 no representation. I was unaware of what his criminal history  
21 was at the time and what is typically done is the government,  
22 who has the resources, knows what the criminal history is of a  
23 defendant and they drafted that language and it was acceptable  
24 to me. I did not make any false representations or any  
25 representations to the government about criminal history.

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1 THE COURT: All right. Your comments are noted.

2 I will note for the record the plea agreement recites,  
3 on page 3, under Criminal History Category: Based upon the  
4 information now available to this office, this office having  
5 previously been defined as the United States Attorney for the  
6 Southern District of New York ("including representations by  
7 the defense"). And it goes on to then find the defendant has  
8 zero criminal history points.

9 MR. GOLDMAN: It is form language, your Honor.

10 THE COURT: Excuse me, Mr. Goldman. Don't keep  
11 interrupting me. You have already said that.

12 This form language was signed by Mr. Zulueta and  
13 approved, expressly by you, and I specifically confirmed that  
14 during the plea hearing. So if it's form language which you  
15 disagree with, you shouldn't have signed it and approved it and  
16 you should have advised your client contrary.

17 In any event, the parties now agree, so I don't know  
18 why we are having a debate about this, the parties now agree  
19 that probation correctly assessed three criminal history points  
20 which place Mr. Zulueta in Criminal History Category II.

21 Mr. Zulueta was arrested three times in 2018, all in  
22 Pennsylvania where he resides. First he was arrested and  
23 convicted of disorderly conduct and fined for getting into a  
24 fight but this offense did not warrant any criminal history  
25 points in the calculation. Second, he was arrested and

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1 convicted of harassment and fined again for an altercation that  
2 involved violence or the threat of violence, but Second Circuit  
3 precedent establishes that a harassment conviction does not  
4 warrant any criminal history points. Third, Mr. Zulueta was  
5 arrested for DUI. He was sentenced to probation and the PSR  
6 finds, as do I, that that warrants one criminal history point.

7 Moreover, there are an additional two criminal history  
8 points because the offense in this case was committed while  
9 Mr. Zulueta was under a state probation term. That results in  
10 a total of three criminal history points putting Mr. Zulueta in  
11 a Criminal History Category of II.

12 Under the sentencing guidelines a total offense level  
13 of 19 and a Criminal History Category of II results in a  
14 guideline range of 33 to 41 months. However, since  
15 Mr. Zulueta's statutory maximum for the crime to which he pled  
16 guilty is three years, the guidelines range is 33 to 36 months  
17 of imprisonment.

18 Now, Mr. Goldman is correct that the PSR takes the  
19 position that the defendant's Criminal History Category may  
20 substantially overrepresent the seriousness of defendant's  
21 criminal history and may warrant a departure, even though the  
22 defendant agreed in the plea agreement that he would not  
23 request a downward departure and did not object to and in fact  
24 concurs in the calculation of the guidelines range. Counsel  
25 has now asked me to depart and adopt the PSR position that a

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1 departure is warranted with respect to the Criminal History  
2 Category.

3 As I have said previously, I deny that request. You  
4 have agreed that the criminal history calculation is correct  
5 and I do not believe you are correct that that DUI is not  
6 something I can consider as part of the overall mix of  
7 information relevant to sentencing. I do not agree, in any  
8 event, that any departure is warranted on the facts before me.

9 While Mr. Zulueta, his record for the DUI may have  
10 been expunged, if that's what you are telling me, nevertheless  
11 he was on probation with regard to that offense and probation  
12 required that he stay out of trouble. He nevertheless  
13 continued the criminal course of conduct which led to his  
14 guilty plea in this case, conduct that he admitted at the time  
15 of his plea he knew was wrong and illegal. I believe that his  
16 Criminal History Category appropriately reflects the  
17 seriousness of committing a crime while on probation.

18 I similarly do not see any reason -- I have given you  
19 my guidelines calculation which, as I say, is in accord with  
20 what's in the PSR. I have also considered, as I must, the  
21 factors under Section 3553(a).

22 Taking all of those factors into account, I do not see  
23 any reason to vary downward from the range of 33 to 36 months.  
24 The reality is that Mr. Zulueta was placed in a position of  
25 trust with respect to the horses under his care. The offense



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1 that he has committed is serious and the record reflects a  
2 certain callousness, frankly, about the harm to the animals  
3 placed under his care, particularly in the intercepted calls  
4 back and forth with Mr. Navarro. There is also obviously  
5 complete disregard for the well-being of the other horses  
6 competing against Mr. Zulueta's horses and the jockeys who were  
7 riding his horses, and other horses, and could have been very,  
8 very seriously injured.

9           Clearly, Mr. Zulueta had a difficult upbringing and it  
10 is commendable that he came to the United States, he worked  
11 hard, he provided for his family. He does appear to be a  
12 loving family man who is admired by a number of people. I  
13 think if I add up the count, there are roughly 16 or 15 letters  
14 in support of Mr. Zulueta. I do believe that he has the  
15 ability, still, to contribute to the community and to achieve  
16 the American dream but he, himself, said he came here, he was  
17 given tremendous opportunities, and instead of maximizing on  
18 those opportunities, while he did work hard, as do all people,  
19 frankly, in the business of caring for horses, he abused that  
20 opportunity, frankly, and he took active steps to hide what he  
21 was doing, none of which, frankly, has been acknowledged in  
22 anything I have seen in the record. The plea allocution talks  
23 about getting drugs from Mr. Cohen. There was no mention  
24 whatsoever of the interaction with Mr. Navarro which is, quite  
25 frankly, shocking and egregious at the level of callousness

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1 that I see in the dialogue back and forth between the two of  
2 them. At times it appears that Mr. Zulueta was actually  
3 educating Mr. Navarro about new and experimental ways to drug  
4 horses and telling him -- telling Navarro -- about the need to  
5 be careful to hide what they were doing so that they would not  
6 be caught by drug enforcement and horse racing authorities.

7 Now, I do recognize clearly, in terms of relative  
8 degrees of culpability, which is a factor that I do need to  
9 take into account and I am taking into account, that  
10 Mr. Zulueta is relatively less culpable than some of the other  
11 defendants in this case, and I certainly have and will take  
12 that into account in terms of the sentence that I intend to  
13 impose.

14 My intent is to, taking all of the 3553 factors into  
15 account after doing my own guidelines calculation, I cannot  
16 ignore either the need to deter further criminal conduct not  
17 necessarily by this defendant but by others who might think  
18 about engaging in similar wrongdoing, and to promote respect  
19 for the rule of law and provide just punishment. For all of  
20 those reasons it is the intent of the Court to sentence  
21 Mr. Zulueta within the guidelines range. I intend to sentence  
22 him to 33 months of imprisonment.

23 I previously signed a forfeiture order. Pursuant to  
24 the plea agreement Mr. Zulueta agreed to forfeit \$47,525. That  
25 order will be part of the judgment in this case. Based on the

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1 record presented to probation and counsel's arguments to me  
2 including that Mr. Zulueta has used up his savings and sold his  
3 home and some of his equipment in order to stay afloat, I do  
4 find that he is unable to pay any fine so it would not be my  
5 intent to impose a fine.

6 There is, as I think you know, a mandatory \$100  
7 special assessment for each count to which he is pleading  
8 guilty.

9 So, in addition, I would impose a one-year term of  
10 supervised release. It would be my intent to impose the  
11 special conditions that are set forth on page 39 of the PSR and  
12 a couple of additional conditions.

13 I do have one question for counsel. Did Mr. Zulueta  
14 surrender his passport?

15 THE DEFENDANT: (In English) Yes.

16 MR. GOLDMAN: Yes, your Honor.

17 THE DEFENDANT: (In English) Yes.

18 THE COURT: It is in the possession, then of  
19 probation?

20 MR. GOLDMAN: I believe in Philadelphia, your Honor.  
21 He appeared in Philadelphia.

22 THE COURT: Yes, but to the probation people there?

23 MR. GOLDMAN: Yes; pretrial services.

24 THE COURT: So I would intend to impose the following  
25 special conditions:

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1           One, that Mr. Zulueta be supervised when he is  
2 released by the district of his residence.

3           Second, if the probation officer determines, based on  
4 his criminal record, personal history, or characteristics that  
5 he poses a risk to another person including any organization,  
6 the probation officer, with the prior approval of the Court,  
7 may require him -- Mr. Zulueta -- to notify -- I'm sorry -- I  
8 may require the probation officer to notify that Mr. Zulueta  
9 notify the other person about the potential risk and that he  
10 comply with any instructions from the probation officer, and  
11 the probation officer may contact the person and confirm that  
12 notice has been provided of any risk.

13           I had previously imposed a condition, it is not  
14 contained in the PSR, but I would intend to include this in the  
15 final judgment: That the defendant must comply with the rules  
16 and regulations of any licensing regime to which he is subject,  
17 including appearance at any disciplinary proceedings, if  
18 required, consistent, of course, with his constitutional rights  
19 to the extent he has any that are implicated and that he wishes  
20 to assert them.

21           I would also add two additional conditions that were  
22 not outlined in the PSR. One is that the defendant must  
23 provide Probation with access to any requested financial  
24 information and must not incur new credit card charges or open  
25 any additional lines of credit without the approval of the

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1 probation officer, unless he is in compliance with the payment  
2 schedule for the forfeiture amount to which he agreed and which  
3 I have ordered.

4 I would also add a search condition; that Mr. Zulueta  
5 must submit his person and any property, residence, vehicles,  
6 papers, computers, or other electronic communication, data  
7 storage devices, cloud storage, or media, and effects, to  
8 search by any United States probation officer and, if needed,  
9 that officer can enlist the assistance of law enforcement. The  
10 search would be conducted when there is reasonable suspicion  
11 concerning violation of a condition of supervision or unlawful  
12 conduct by Mr. Zulueta. Failure to submit to a search may be  
13 grounds for risk indication of release. Mr. Zulueta would be  
14 obligated to warn any other occupants of his premises that the  
15 premises may be subject to search pursuant to this condition.  
16 Any search would need to be conducted at a reasonable time and  
17 in a reasonable manner.

18 Mr. Chow, I assume there is no restitution in this  
19 case?

20 MR. CHOW: That is correct.

21 THE COURT: It is the intent of the Court then that I  
22 would not be obviously entering any restitution order. As I  
23 said, I do not intend to impose a fine.

24 Does the government know of any legal reason that this  
25 sentence may not be imposed?

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1 MR. CHOW: No, your Honor.

2 THE COURT: Mr. Goldman?

3 MR. GOLDMAN: No, your Honor.

4 THE COURT: Mr. Zulueta, would you please stand?

5 It is the judgment of the Court that you be imprisoned  
6 for a term of 33 months. That term would be followed by one  
7 year of supervised release on the special and mandatory  
8 conditions set forth in the PSR and on the special conditions  
9 that I have just outlined on the record. The forfeiture order,  
10 the preliminary order I previously entered requiring you to  
11 forfeit the amount of \$47,525, is incorporated into my  
12 judgment. I am not imposing any fine or restitution. There is  
13 a mandatory \$100 special assessment, payable immediately.

14 You may be seated, sir.

15 It is Court's view that Mr. Zulueta is a worthy  
16 candidate for voluntary surrender. I assume there is no  
17 objection by the government?

18 MR. CHOW: No, your Honor.

19 THE COURT: Mr. Goldman, is there any request with  
20 regard to facilities that you would like me to include in the  
21 judgment?

22 MR. GOLDMAN: Yes, your Honor. Yes; there is a  
23 federal facility Fairton, New Jersey, and is close proximity to  
24 family and loved ones.

25 THE COURT: I will include that recommendation in my

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1 judgment.

2 As I think you know, Mr. Goldman, Mr. Zulueta may  
3 not -- a designation of a facility is wholly within the  
4 authority of the Bureau of Prisons. I do not have authority to  
5 dictate what facility you should be sent to, but I certainly  
6 will make that request.

7 MR. GOLDMAN: Thank you, your Honor.

8 THE DEFENDANT: (In English) Thank you.

9 THE COURT: You're welcome, sir.

10 Does the government move to dismiss my open counts?

11 MR. CHOW: Yes. At this time the government would  
12 move to dismiss all open counts against Mr. Zulueta.

13 THE COURT: Then are you able to tell me, for the  
14 record, what those are?

15 MR. CHOW: I believe it is the original and then the  
16 S1 indictment.

17 THE COURT: Mr. Zulueta, I need to advise you at this  
18 time that to the extent you haven't waived it in your plea  
19 agreement, you do have the right to appeal from conviction and  
20 from the sentence that I have just imposed. If you are unable  
21 to pay the costs of an appeal, you may apply for leave to  
22 appeal in forma pauperis. Any notice of appeal must be filed  
23 within 14 days of the judgment of conviction. We try very hard  
24 to get the judgments entered the same day as sentencing --  
25 although I do have a full calendar today -- but that judgment

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1 will be entered either later today or tomorrow, so the clock  
2 for any appeal will begin to run at that time and you have 14  
3 days.

4 So the Bureau of Prisons, I am advised by probation,  
5 that the Bureau of Prisons requires roughly 90 days in order to  
6 review the record and to designate a facility, so I order that  
7 you surrender, as directed, by the Bureau of Prisons, on May  
8 24th, in accordance with the instructions that will be  
9 provided.

10 Mr. Zulueta, as I said, in reviewing the record I do  
11 acknowledge that you are obviously a hard-working person. You  
12 do genuinely seem to appreciate the opportunity that was given  
13 to you in coming to this country and in becoming a citizen.  
14 This is the greatest country in the world and it affords  
15 unbelievable opportunities to people. I think you know that,  
16 sir. You went a stray over the course of several years but you  
17 have your whole life ahead of you, and it is up to you what you  
18 are going to make of your life going forward. So, I wish you  
19 well. I hope that I will not see you back before me in  
20 connection with any violations regarding this case or any other  
21 case, and that you will find the right path forward and stay  
22 out of trouble.

23 Is there anything further for the record, Mr. Chow?

24 MR. CHOW: No, your Honor.

25 THE COURT: Mr. Goldman?



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1 MR. GOLDMAN: No, your Honor.

2 THE COURT: I thank our court reporter very much, and  
3 we are adjourned.

4 Thank you to the interpreter as well.

5 We are adjourned.

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